

ADAMS v. TECK COMINCO EXCERPTS OF PLANNING CONFERENCE HEARING  
8/9/2007

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

ENOCH ADAMS, JR., LEROY  
ADAMS, ANDREW KOENIG, JERRY  
NORTON, DAVID SWAN and JOSEPH  
SWAN,

Plaintiffs,

vs.

TECK COMINCO ALASKA  
INCORPORATED,

Defendant,

NANA REGIONAL CORPORATION,  
and NORTHWEST ARCTIC BOROUGH,

Intervenor-Defendants.

Case No. A:04-CV-0049 (JWS)

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TRANSCRIPT OF EXCERPTS OF PLANNING CONFERENCE HEARING

BEFORE THE HONORABLE JOHN W. SEDWICK

Anchorage, Alaska  
AUGUST 9, 2007

ADAMS v. TECK COMINCO EXCERPTS OF PLANNING CONFERENCE HEARING  
8/9/2007

<p style="text-align: right;">Page 2</p> <p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 9:11:16</p> <p>3 MR. COLE: This is Mr. Cole on the phone.</p> <p>4 The defendants and I have had a conversation</p> <p>5 about updating expert reports, because they were filed</p> <p>6 at this point I think almost a year and a half ago.</p> <p>7 And in terms of the economics, there</p> <p>8 obviously -- the length of time that has -- that the</p> <p>9 experts would be considering in terms of economic</p> <p>10 benefit in this case is obviously longer than they had</p> <p>11 considered.</p> <p>12 So I am wondering if we want to just</p> <p>13 stipulate to updating expert reports or if we want to</p> <p>14 go into the penalty phase and just know that</p> <p>15 obviously, the January 1st or January 15th, 2006</p> <p>16 cut-off date when the expert reports were done is not</p> <p>17 going to be the realistic time or number that the</p> <p>18 experts are going to come in with at trial.</p> <p>19 THE COURT: The -- let me ask Mr. Halloran,</p> <p>20 and if he agrees that the expert reports need to be</p> <p>21 updated.</p> <p>22 MR. HALLORAN: I'm not sure that they do,</p> <p>23 Your Honor. I mean, if it's just a matter of</p> <p>24 supplying new numbers, I mean, we don't have a problem</p> <p>25 with that.</p>	<p style="text-align: right;">Page 4</p> <p>1 the opportunity to test the adequacy of that</p> <p>2 foundation and other things contained in it.</p> <p>3 MR. COLE: We don't have a problem with that,</p> <p>4 Your Honor.</p> <p>5 THE COURT: Well, Mr. Halloran, what's your</p> <p>6 view?</p> <p>7 MR. HALLORAN: It seems to us that, I mean,</p> <p>8 they had the opportunity to provide testimony that had</p> <p>9 a foundation. They didn't do it; it was stricken. I</p> <p>10 mean, they should just live with the status of this</p> <p>11 case.</p> <p>12 I mean, discovery has closed quite a long</p> <p>13 time ago. And to reopen it at this point in time just</p> <p>14 seems to me to be opening Pandora's box.</p> <p>15 THE COURT: All right. I'm not prepared to</p> <p>16 resolve this this morning. If you want to file a</p> <p>17 motion to reopen the matter, then, Mr. Cole, you can</p> <p>18 do that.</p> <p>19 Otherwise, unless you succeed with such a</p> <p>20 motion, the only thing I will direct the parties to do</p> <p>21 is to update the existing admissible experts' reports</p> <p>22 to take into account the passage of time.</p> <p>23 And I'll ask that you have that information</p> <p>24 exchanged with one another. It seems to me a</p> <p>25 reasonable date would be to do that by the -- by</p>
<p style="text-align: right;">Page 3</p> <p>1 If it's a matter of substantially changing</p> <p>2 the testimony that the experts are providing, we would</p> <p>3 have a need then to do additional depositions and</p> <p>4 everything else.</p> <p>5 THE COURT: Well, let me ask Mr. Cole. Did</p> <p>6 you have anything in mind other than bringing</p> <p>7 calculations and opinions forward based on the passage</p> <p>8 of time?</p> <p>9 MR. COLE: Well, Your Honor had stricken part</p> <p>10 of our expert economist testimony. And if Your Honor</p> <p>11 is amenable to it, we would like to address that</p> <p>12 stricken piece of testimony in a final expert report.</p> <p>13 THE COURT: Well, what do you mean? You'd</p> <p>14 like to regurgitate what I struck?</p> <p>15 MR. COLE: No. We would like to provide</p> <p>16 expert opinion on that issue that has a proper</p> <p>17 foundation. Your Honor deemed that the expert opinion</p> <p>18 did not have a proper foundation on one particular</p> <p>19 issue. And --</p> <p>20 THE COURT: That does sound like, Mr. Cole,</p> <p>21 that would open things up for some additional</p> <p>22 discovery.</p> <p>23 If you'd provide -- if the court permits you</p> <p>24 to provide additional expert testimony with the proper</p> <p>25 foundation, and I suppose we need to afford the others</p>	<p style="text-align: right;">Page 5</p> <p>1 the -- I'm looking for a sensible cut-off date. A</p> <p>2 sensible cut-off date might be the end of this</p> <p>3 calendar year.</p> <p>4 And if that were the date, Mr. Halloran,</p> <p>5 could your experts provide their reports updated</p> <p>6 through the end of the year by January 18?</p> <p>7 MR. HALLORAN: Yes, Your Honor.</p> <p>8 THE COURT: Mr. Cole, could yours?</p> <p>9 MR. COLE: Absolutely, Your Honor.</p> <p>10 THE COURT: All right. I'm going to direct</p> <p>11 that the parties update the existing admissible</p> <p>12 experts' opinions and reports on January 18 with their</p> <p>13 views through the end of the calendar year, on</p> <p>14 December 31, 2007.</p> <p>15 With respect to any additional expert</p> <p>16 testimony, I'll simply have to await further motion</p> <p>17 practice.</p> <p>18 Now, then, the last thing, Mr. Cole, that you</p> <p>19 wanted to bring up.</p> <p>20 9:16:00</p> <p>21 (This portion not requested.)</p> <p>22 9:17:40</p> <p>23 THE COURT: Similarly, Mr. Cole, let's set</p> <p>24 August 31st as the deadline for any motion you wish to</p> <p>25 bring that would reopen discovery.</p>

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<p style="text-align: right;">Page 6</p> <p>1 MR. COLE: Okay. 2 9:17:51 3 (End of requested portions.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	
<p>1 TRANSCRIBER'S CERTIFICATE 2 I, Jeanette Blalock, hereby certify that the 3 foregoing pages numbered 1 through 6 are a true, 4 accurate, and complete transcript of excerpts of the 5 proceedings held in Case No. A:04-CV-0049 (JWS), Enoch 6 Adams, Jr., et al. versus Teck Cominco Alaska, 7 Incorporated, held on August 9, 2007, before the 8 Honorable John W. Sedwick, transcribed by me from a 9 copy of the electronic sound recording, to the best of 10 my knowledge and ability. 11 12 13 _____ 14 Date Jeanette Blalock, Transcriber 15 16 17 18 19 20 21 22 23 24 25</p>	

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